

# CONSTITUTIONMAKING.ORG

## OPTION REPORTS

### CONSTITUTIONAL AMENDMENT

May 22, 2008

The following report is one of a series produced by the Constitutional Design Group, a group of scholars dedicated to distributing data and analysis useful to those engaged in constitutional design. The primary intent of the reports is to provide current and historical information about design options in written constitutions as well as representative and illustrative text for important constitutional provisions. Most of the information in these reports comes from data from the Comparative Constitutions Project (CCP), a project sponsored by the National Science Foundation. Interested readers are encouraged to visit [constitutionmaking.org](http://constitutionmaking.org) for further resources for scholars and practitioners of constitutional design.

Note that the dates provided herein for constitutional texts reflect either the year of initial promulgation *or* of a subsequent amendment, depending on the version used for analysis. For example, Brazil 2005 refers to the Brazilian Constitution of 1988, as amended through 2005.

## 1. INTRODUCTION

Constitutional amending is a pivotal element of a constitution as it offers the means to update constitutional texts to the new realities in a society. Designers must balance between the need for flexibility in a changing world and the need for entrenchment of fundamental rules. We describe below constitutional provisions regarding constitutional amending.

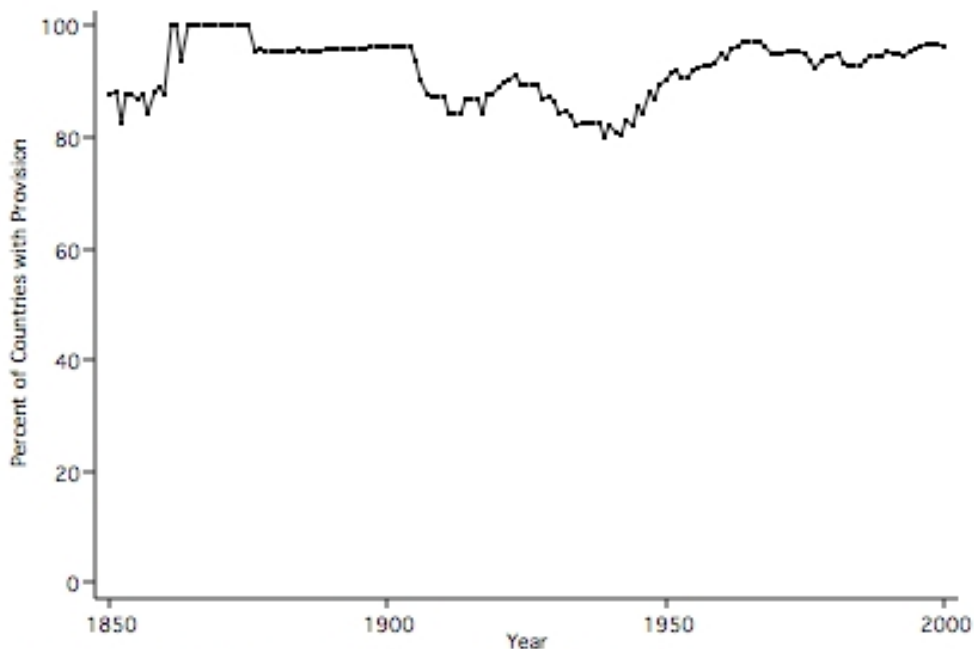
## 2. DATA SOURCE(S)

The analysis reported below is based on data the Comparative Constitutions Project (please see the appendix for more information on this resource). As of this writing, the project sample includes 550 of the roughly 800 constitutions put in force since 1789, including more than 90% of constitutions written since World War II.

## 3. CLASSIFICATION AND HISTORICAL TRENDS

Overall, 93% of constitutions in the sample stipulate a procedure for amending the constitutions. The percent of constitutions in this category has fluctuated over time between 80% and 100%. In 2000, 96% of constitutions in force provided for an amending procedure.

**Figure 1. Percent of Constitutions That Allow for Constitutional Amending by Year (N=550)**



Data from the Comparative Constitutions Project - [www.comparativeconstitutionsproject.org](http://www.comparativeconstitutionsproject.org)

#### 4. NOTES ON ATYPICAL CASES

None.

#### 5. SAMPLE CONSTITUTIONAL PROVISIONS

*(Note: dates provided reflect the version of the constitution used to obtain sample provisions, and represent either initial year of promulgation or year through which subsequent amendments are included.)*

(1) The provisions of adherence to the fundamentals of the sacred religion of Islam and the regime of the Islamic Republic cannot be amended. (2) The amendment of the fundamental rights of the people are permitted only in order to make them more effective. (3) Considering new experiences and requirements of the time, other contents of this Constitution can be amended by the proposal of the President or by the majority of the National Assembly in accordance with the provisions of Article 67 and 146 of this constitution.

- *Afghanistan 2004, Article 149*

A constitutional revision is decided upon on the initiative of the President of the Republic.

It is voted on equal terms by the National People's Assembly and the Council of the Nation under the same conditions as a legislative text. It is submitted by referendum for the approval by the people in fifty (50) days following its adoption.

The constitutional revision, approved by the people, is promulgated by the President of the Republic.

- *Algeria 2002, Article 174*

The initiative of the revision of the Constitution belongs concurrently to the President of the Republic and to the members of the National Assembly.

- *Cote D'Ivoire 2000, Article 124*

Constitutional amendments may be proposed by:

I - at least one-third of the members of the Chamber of Deputies or the Federal Senate;

II - the President of the Republic;

III - more than one-half of the Legislative Assemblies of units of the Federation, each manifesting its decision by a simple majority of its members.

§ 1°. The Constitution cannot be amended during federal intervention, state of defense or stage of siege.

§ 2°. A proposed amendment shall be debated and voted on in each Chamber of the National Congress, in two rounds, and shall be considered approved if it obtains three-fifths of the votes of the respective members in both rounds.

§ 3°. A Constitutional amendment shall be promulgated by the Executive Committees of the Chamber of Deputies and Federal Senate, taking the next sequential number.

§ 4°. No proposed constitutional amendment shall be considered that is aimed at abolishing the following:

I - the federalist form of the National Government;

II - direct, secret, universal and periodic suffrage;

III - separation of powers;

IV - individual rights and guarantees.

§ 5°. The subject of a defeated or prejudiced proposed Constitutional amendment may not be made the subject of another proposed amendment in the same legislative session.

- *Brazil 2005, Article 60*

The initiative for the revision of the Constitution belongs concurrently to the President of the Republic, on a proposal by the Prime Minister, and to members of Parliament.

A Government or parliamentary bill to amend the Constitution must be passed by the two Assemblies in identical terms. The amendment shall have effect after approval by referendum.

A Government bill to amend the Constitution shall not be submitted to referendum if the President of the Republic decides to submit it to Parliament convened in Congress; the Government bill to amend the Constitution shall then be approved only if it is adopted by a three-fifths majority of the votes cast. The Bureau of the Congress shall be that of the National Assembly.

No amendment procedure shall be commenced or continued where the integrity of the territory is jeopardized.

The republican form of government cannot be the object of an amendment.

- *France 2005, Article 89*

(1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.

- *India 2003, Article 368.1*

Laws amending the Constitution and other constitutional laws shall be adopted by each

Chamber after two successive debates at intervals of not less than three months, and shall be approved by an absolute majority of the members of each Chamber in the second voting.

The laws themselves are submitted to a popular referendum when, within three months of their publication, such a request is made by one-fifth of the members of a Chamber or five hundred thousand electors or five Regional Councils. The law submitted to referendum shall not be promulgated if is not approved by a majority of valid votes.

A referendum shall not be held if the law has been approved in the second voting by each of the Chambers by a majority of two-thirds of the members.

- *Italy 2003, Article 138*

Amendments to this Constitution shall be initiated by the Diet, through a concurring vote of two-thirds or more of all the members of each house, and shall thereupon be submitted to the people for ratification, which shall require the affirmative vote of a majority of all votes cast thereon, at a special referendum or at such election as the Diet shall specify.

Amendments when so ratified shall immediately be promulgated by the Emperor in the name of the people, as an integral part of this Constitution.

- *Japan 1946, Article 96*

The present Constitution may be added to, or amended. For the additions or amendments to become a part thereof, it shall be required that the Congress of the Union, by a vote of two-thirds of the members present, agrees to the amendments or additions and that they be approved by a majority of the legislatures of the States. The Congress of the Union, or the Permanent Commission, as the case may be, shall count the votes of the legislatures and shall announce those additions or amendments that have been approved.

- *Mexico 2003, Article 135*

The initiative concerning the revision of the Constitution belongs to the King and the Chamber of Representatives and the Chamber of Counselors.

The King can submit directly to a referendum the project of revision which he has initiated.

- *Morocco 1996, Article 103*

- (1) Section 1 and this subsection may be amended by a Bill passed by (a) the National Assembly, with a supporting vote of at least 75 per cent of its members; and (b) the National Council of Provinces, with a supporting vote of at least six provinces.
- (2) Chapter 2 may be amended by a Bill passed by (a) the National Assembly, with a supporting vote of at least two thirds of its members; and (b) the National Council of Provinces, with a supporting vote of at least six provinces.
- (3) Any other provision of the Constitution may be amended by a Bill passed (a) by the National Assembly, with a supporting vote of at least two thirds of its members; and (b) also by the National Council of Provinces, with a supporting vote of at least six provinces, if the amendment (i) relates to a matter that affects the Council; (ii) alters provincial boundaries, powers, functions or institutions; or (iii) amends a provision that deals specifically with a provincial matter.
- (4) A Bill amending the Constitution may not include provisions other than constitutional amendments and matters connected with the amendments.
- (5) At least 30 days before a Bill amending the Constitution is introduced in terms of section 73(2), the person or committee intending to introduce the Bill must (a) publish in the national Government Gazette, and in accordance with the rules and orders of the National Assembly, particulars of the proposed amendment for public comment; (b) submit, in accordance with the rules and orders of the Assembly, those particulars to the provincial legislatures for their views; and (c) submit, in accordance with the rules and orders of the National Council of Provinces, those particulars to the Council for a public debate, if the proposed amendment is not an amendment that is required to be passed by the Council.
- (6) When a Bill amending the Constitution is introduced, the person or committee introducing the Bill must submit any written comments received from the public and the provincial legislatures (a) to the Speaker for tabling in the National Assembly; and (b) in respect of amendments referred to in subsection (1), (2), or (3)(b), to the Chairperson of the National Council of Provinces for tabling in the Council.
- (7) A Bill amending the Constitution may not be put to the vote in the National Assembly within 30 days of (a) its introduction, if the Assembly is sitting when the Bill is introduced; or (b) its tabling in the Assembly, if the Assembly is in recess when the Bill is introduced.
- (8) If a Bill referred to in subsection (3)(b), or any part of the Bill, concerns only a specific province or provinces, the National Council of Provinces may not pass the Bill or the relevant part unless it has been approved

by the legislature or legislatures of the province or provinces concerned.

(9) A Bill amending the Constitution that has been passed by the National Assembly and, where applicable, by the National Council of Provinces, must be referred to the President for assent.

- *South Africa 1996, Article 74*

An amendment of the Constitution may be made only under the rules and procedure as follows: (1) a motion for amendment must be proposed either by the Council of Ministers or members of the House of Representatives of not less than one-fifth of the total number of the existing members of the House of Representatives or members of both Houses of not less than one-fifth of the total number of the existing members thereof. Members of the House of Representatives may propose or jointly propose such motion only upon the resolutions of the political parties to which they belong; A motion for amendment which has the effect of changing the democratic regime of government with the King as Head of the State or changing the form of the State shall be prohibited; (2) a motion for amendment must be proposed in the form of a draft Constitution Amendment and the National Assembly shall consider it in three readings; (3) the voting in the first reading for acceptance in principle shall be by roll call and open voting, and the amendment must be approved by votes of not less than one-half of the total number of the existing members of both Houses; (4) the voting in the second reading for consideration section by section shall be decided by a simple majority of votes; (5) at the conclusion of the second reading, there shall be an interval of fifteen days after which the National Assembly shall proceed with its third reading; (6) the voting in the third and final reading shall be by roll call and open voting, and its promulgation as the Constitution must be approved by votes of more than one-half of the total number of the existing members of both Houses; (7) after the resolution has been passed in accordance with the above rules and procedure, the draft Constitution Amendment shall be presented to the King, and the provisions of Section 93 and Section 94 shall apply mutatis mutandis.

- *Thailand 1997, Article 313*

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no

Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

- *United States 1789, Article V*

The amendments to the Constitution will be transacted in the following form:

1. The initiative can come from fifteen per cent of the citizens registered in the Civil and Electoral Registrar; or by thirty per cent of the members of the National Assembly or [from] the President of the Republic in the Council of Ministers.
2. When the initiative comes from the National Assembly, the amendment will require the approval of the latter by the majority of its members and will be discussed, according to the procedure established in this Constitution for the formation of laws.
3. The Electoral Power will submit the amendments to referendum in thirty days following their formal reception.
4. The amendments will be considered approved in accordance with that established in this Constitution and the law regarding the approving referendum.
5. The amendments will be numbered consecutively and will be published after the Constitution without altering the text of the latter, but noting [in] a foot[note] to the amended article or articles the reference of the number and date of the amendment that modified it.

The initiative can come from fifteen per cent of the citizens registered in the Civil and Electoral Register, or by thirty percent of members of National Assembly or by President of Republic in the Council of Ministers.

- *Venezuela 1999, Article 341.1*

## 6. APPENDIX

This report is based on the following question from the Comparative Constitution Project's "survey instrument":

[AMEND]-Does the constitution provide for at least one procedure for amending the constitution?

1. Yes
2. No
96. other, please specify in the comments section
97. Unable to Determine

For additional documentation on the Comparative Constitutions Project, (including the full codebook, the sample, the sources of constitutional



texts and translation issues related to those texts, coding procedures, publicly available data, etc.) please visit the project website at [www.comparativeconstitutionsproject.org](http://www.comparativeconstitutionsproject.org).